

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION**

DERRICK BADY

PETITIONER

v.

No. 2:01CR3-B

UNITED STATES OF AMERICA

RESPONDENT

MEMORANDUM OPINION

This matter comes before the court on the July 12, 2005, motion of *pro se* petitioner Derrick Bady for a writ of *habeas corpus* under 28 U.S.C. § 2255. The petitioner pled guilty to knowingly and intentionally distributing a Schedule II narcotic controlled substance (crack cocaine). In its judgment entered September 12, 2001, the court made a downward departure from the sentencing guidelines and sentenced the petitioner to 196 months imprisonment, eight years of supervised release, and a special assessment of \$100.00. The petitioner did not appeal, and the time for appeal expired nearly four years ago.

The petitioner now argues that he was sentenced improperly because the length of his sentence was based in part on facts not determined by a jury or admitted during sentencing, but instead contained in his Pre-Sentence Investigation Report, citing *United States v Booker*, 125 S.Ct 738 (2005).

The petitioner seeks a new sentence based upon the holding in *Booker*. For the reasons set forth below, the instant petition shall be denied. *Booker* applies only to those cases “pending on direct review or not yet final on January 12, 2005.” *United States v. Madrigal*, 2005 WL 913476 (5th Cir.). The petitioner’s case was final long before the January 12, 2005, cutoff date, as the court entered judgment September 12, 2001, and the petitioner never appealed. As such, the instant case is not one to which *Booker* applies, and the instant petition for a writ of *habeas*

corpus under 28 U.S.C. § 2255 shall be dismissed with prejudice. A final judgment consistent with this memorandum opinion shall issue today.

SO ORDERED, this the 8th day of September, 2005.

/s/ Neal Biggers

NEAL B. BIGGERS
SENIOR U. S. DISTRICT JUDGE